IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 326

METLAKATLA INDIAN COMMUNITY, ANNETTE ISLAND RESERVE, a Federally Chartered Corporation,
Appellant,

vs.

WILLIAM A. EGAN, Governor of the State of Alaska,
and
THE STATE OF ALASKA, *Appellees.*

On Appeal from the District Court for the State of Alaska

REPLY BRIEF FOR APPELLANT

Most of the contentions made in appellees' brief have been anticipated and, we believe, fully answered in Appellant Metlakatla's Main Brief. Only two arguments now advanced are truly novel. One of them relates to the alleged invalidity of the Metlakatla Fishery Reserve on the ground of vagueness, the other to the alleged unconstitutionality of Section 4 of the Alaska Statehood Act on the ground that the Metlakatla Indian Community is not an Indian Tribe.

I. The Boundaries of the Metlakatla Fishery Reserve Are Clearly Defined.

Appellees concede that Appellant Metlakatla was granted a reservation by statute in 1891 and that the reservation was defined by Presidential Proclamation in 1916 to include "waters within three thousand feet from the shoreline at mean low tide." Appellees' Br., p. 43. However, great emphasis is placed by appellees on the fact that when this Court, in 1918, had the issue before it, it relied on the statutory grant of 1891, which the Court defined as including the Annette Islands and "surrounding waters," but failed to mention the Presidential Proclamation. *Alaska Pacific Fisheries* v. *United States*, 248 U.S. 78, 89 (1918). Appellees argue that, since this Court did not mention the Presidential Proclamation and thus "declined to dignify it," we must now disregard the Proclamation. It follows, appellees further contend, that the Reserve as defined by this Court is too indefinite to establish a clear line of demarcation between Federal and State jurisdiction and that the Reserve must, therefore, have fallen with the advent of Statehood.

It might appropriately be asked how it could follow that the boundary of the Fishery Reserve was definite enough to permit issuance of an injunction against private trespassers in the *Alaska Pacific Fisheries* case, *supra*, but is at the same time so indefinite as to prevent the issuance of an injunction against the State's efforts to interfere with the operation of the Reserve. But this question need not be answered. The fact of the matter is that since this Court considered the problems in 1918, the Presidential Proclamation of 1916 has been expressly ratified by Congress. Section 3 of the Act of May 7, 1934, 48 Stat. 667, provides:

(b) The Indians of the Tsimshian Tribe, and those people known as Metlakahtlans, who emigrated from Metlakahtla, British Columbia, Canada, to Annette Island, in the Alexander Archipelago in southeastern Alaska in the year 1887, and there established a colony known as Metlakahtla, Alaska, and any and all other British Columbia Indians who joined them there not later than January 1, 1900, and have since resided continuously therein, having been faithful and loyal to the Constitution, laws and the Government of the United States, are hereby declared to be citizens of the United States.

(c) The granting of citizenship to the Indians described in section 3(b) of this title shall not in any manner affect the rights, individual or collective, of the said Indians to any property, nor shall it affect the rights of the United States Government to supervise, and administer the affairs of the said Metlakahtla Colony. And *any reservations heretofore made by any Act of Congress or Executive order or proclamation for the benefit of the said Indians shall continue in full force and effect* and shall continue to be subject to modification, alteration, or repeal by the Congress or the President, respectively. (Emphasis supplied.)

II. The Metlakatla Indian Community Is an Indian Tribe

Appellees' assertion that the power of Congress under the Indian Commerce Clause extends only to Tribal Indians, Appellees' Br., p. 45, correctly states a basic proposition of Indian law. See COHEN, HANDBOOK OF FEDERAL INDIAN LAW 177-8 (1945) (1958 Rev. at 573-5). Appellees deviate from the path of established law, however, when they contend that Appellant Metlakatla is not an Indian Tribe and that the Federal Government has no authority to deal with it. This is indeed a revolutionary doctrine which, if accepted by

this Court as applying to Alaska Natives, would require the immediate cessation of all special Federal assistance programs to these Natives, most of which programs are in the field of public health. Such a doctrine would strip from the people of the State of Alaska far more than certain fishing interests would gain from the elimination of three competitors.[1]

The fact of the matter is that Metlakatla is, as it is designated in the caption of this appeal and was designated in the complaint, an "Indian community." It has been recognized as such by the Federal Government since prior to 1891 and is recognized as such to this day. Its local government operates under a Constitution approved by the U. S. Department of the Interior on August 23, 1944 under Section 16 of the Indian Reorganization Act, as amended, 25 U.S.C. § 476. Its business ventures are carried out under the terms of a Federal charter approved on the same date under Section 17 of the Indian Reorganization Act, as amended, 25 U.S.C. § 477. Appellees evidently suggest that both of these documents are void, that the Department of the Interior erred in recognizing Metlakatla as an Indian Community.

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[1] As long ago as 1936 Senator Gruening, then Director of the Division of Territories and Island Possessions of the Department of the Interior, observed:

> The extension of the economic and social benefits of the Indian reorganization act to Alaska has paved the way for the security of approximately one-half of the present population of the Territory, whose stabilized future is not only an essential act of humanitarianism but also an important item of wholesome advance.

Annual Report of the Secretary of the Interior (1936) at 30.

The law applicable to this problem is authoritatively stated in COHEN,[2] *op. cit. supra,* at 268, as follows:

> The question of tribal existence, in the legal or political sense, has generally arisen in determining whether some legislative, administrative, or judicial power with respect to Indian "tribes" extended to a particular group of Indians.
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> * * *
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> While . . . making the validity of congressional and administrative actions depend upon the existence of tribes, the courts have said that it is up to Congress and the executive to determine whether a tribe exists. Thus the "political arm of the Government" would seem to be in a position to determine the extent of its power. In this respect the question of tribal existence and congressional power has been classed as a "political question" along with the recognition of foreign governments and other issues of international relations.

As Justice Van Devanter observed in *United States* v. *Sandoval,* 231 U.S. 28, 46 (1913):

> Of course, it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions of whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress, and not by the courts.

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[2] The late Felix S. Cohen has been characterized by this Court as "an acknowledged expert in Indian Law." *Squire* v. *Capoeman,* 351 U.S. 1, 8 (1956).

The procedure followed by the Executive in deciding on the existence of tribes has been explained by COHEN, *op. cit. supra,* at 270-71, as follows:

> The question of what groups constitute tribes or bands has been extensively considered in recent years by the administrative authorities of the Federal Government in connection with tribal organization effected pursuant to section 16 of the Act of June 18, 1934. A showing that the group seeking to organize is entitled to be considered as a tribe, within the meaning of the act, is deemed a prerequisite to the holding of a referendum on a proposed tribal constitution, and the basis for such a holding is regularly set forth in the letter from the Commissioner of Indian Affairs to the Secretary of the Interior recommending the submission of a tribal constitution to a referendum vote. In cases of special difficulty, a ruling has generally been obtained from the Solicitor for the Interior Department as to the tribal status of the group seeking to organize. The considerations which, *singly, or jointly,* have been particularly relied upon in reaching the conclusion that a group constitutes a "tribe" or "band" have been:
>
> (1) That the group has had treaty relations with the United States.
>
> (2) That the group has been denominated a tribe by act of Congress or Executive order.
>
> (3) That the group has been treated as having collective rights in tribal lands or funds, even though not expressly designated a tribe.
>
> (4) That the group has been treated as a tribe or band by other Indian tribes.

(5) That the group has exercised political authority over its members, through a tribal council or other governmental forms.

Other factors considered, though not conclusive, are the existence of special appropriation items for the group and the social solidarity of the group.

Ethnological and historical considerations, although not conclusive, are entitled to great weight in determining the question of tribal existence. (Emphasis supplied.)

Appellant Metlakatla "has been treated as having collective rights in tribal lands or funds." Act of March 3, 1891, 26 Stat. 1101, 48 U.S.C. § 358; Presidential Proclamation No. 1332, April 28, 1916, 39 Stat. 1777; Act of May 7, 1934, 48 Stat. 667. It "has exercised political authority over its members." See COHEN, *op. cit. supra,* at 415 (1958 Rev. at 963-64). It has "social solidarity" as a group, is largely of the same ethnic stock, and has a continued history as a group. *Ibid.* The Interior Department thus clearly did not err when it approved a Constitution and Charter in 1944, continuing its recognition of Metlakatla as an Indian Tribal community. Such recognition must be deemed conclusive. See *United States* v. *Holliday,* 70 U.S. (3 Wall.) 407, 418-419 (1866); *The Kansas Indians,* 72 U.S. (5 Wall.) 737, 755-57 (1867); *Chippewa Indians* v. *United States,* 307 U.S. 1, 4-5 (1939).

III. Appellees' Other Arguments Are Similarly Without Merit

Other arguments of appellees are fully answered by the Main Brief of Appellant Metlakatla. Thus the contention that control of Indian fisheries passed to the State under Section 6(e) of the Alaska Statehood Act (Appellees' Br., p. 23), is rebutted by Appellant Met-

lakatla's analysis of Section 4 of that Act (Appellant's Br., pp. 28-39).[3] Appellees' bald assertion that Section 4 constitutes surplusage (Appellees' Br., p. 60) runs counter to the basic canon of statutory construction that "a legislature is presumed to have used no superfluous words," *Platt* v. *Union Pacific R.R.*, 99 U.S. 48, 58 (1879), and that "[i]t is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the Legislature was ignorant of the meaning of the language it employed." *Inhabitants of Montclair* v. *Ramsdell*, 107 U.S. 147, 152 (1883). The contention that Section 4 of the Statehood Act is unconstitutional as violative of the "equal footing" doctrine (Appellees' Br., pp. 57-60) is shown to be unsound on pp. 39-42 of Appellant Metlakatla's Main Brief. Appellees entire discussion of the Alaska Omnibus Act (Appellees' Br., pp. 35-39) is wholly off the point as a mere examination of the Budget Bureau report, reproduced on p. 38 of Metlakatla's Brief, will demonstrate.[4]

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[3] In suggesting that the Secretary of the Interior did not rely on Section 4 of the Statehood Act until he published his proposed 1960 regulations (Appellees' Br., p. 2), appellees have apparently overlooked the fact that at least as early as March 10, 1959 the Under Secretary of the Interior announced his reliance on Section 4 as a source of continuing authority over the Metlakatlans. See Appellant Metlakatla's Main Brief, p. 27, n. 3.

[4] Appellees are under the impression that the section of the Omnibus Act relevant to this case was designed to reduce the power of the State. The Budget Bureau letter transmitting the Omnibus Act to Congress shows that the legislative intent was to expand the powers of the State with regard to Federal land, but not with regard to Indian land. See H.R. Rep. No. 369, 86th Cong., 1st Sess. 6 (1959); Hearings before the Senate Interior Committee on S. 1541, 86th Cong., 1st Sess. 64 (1959).

Throughout their brief, appellees have repeatedly alleged that 42% of Alaska's fishermen are natives and that they would be at all times beyond the State's control if this Court reverses the District Court. Lest this Court be left with a misapprehension as to appellant's position with regard to the nature and extent of its rights, we wish to set the record straight.

Appellant Metlakatla is in no position to confirm or deny the figure of 42%. Appellant most emphatically denies, however, the view attributed to it that mere racial origin exempts Alaska native fishermen from State control, irrespective of where they may fish. It is appellant's position that native fishermen are under exclusive Federal control only if they fish in a geographic area in which they have rights preserved by Section 4 of the Alaska Statehood Act. Thus, appellees' illustrative example, Senator Beltz (Appellees' Br., p. 58), would most assuredly be under State control if he attempted to fish within the Annette Island Reserve. Similarly, Metlakatlans would be under State control when they proceed beyond the boundaries of the Reserve—as they often do.

CONCLUSION

For the reasons set forth in the Briefs of Appellants, this Court should note jurisdiction and reverse the judgment below.

Respectfully submitted,

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